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09/826,690	04/05/2001	Joseph Harbaugh	6994-1	4205

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EXAMINER

CASLER, TRACI

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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08/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/826,690

Applicant(s)

HARBAUGH, JOSEPH

Examiner

Traci L. Casler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to papers filed on April 30, 2007.

Claims 1-22 have been cancelled.

Claims 23-44 have been added.

Claims 23-44 have been rejected.

Claim Rejections - 35 USC § 112

1. Claims 25 and 40-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
2. As to claim 25 the disclosure fails to provide support for the "pre-determined" score as claimed. The disclosure discusses a pre-determined score but sets for no restrictions or teachings on a specific "pre-determined" score. As claims the limitation s of the claim are narrower than that allowed by the disclosure and one of ordinary skill in the art would not know that the pre-determined score is limited to the claim language.
3. As to claims 40-41 disclosure fails to provide support for the shifting-range score as claimed. The disclosure discusses a shifting rang score but sets for no restrictions or teachings on a specific shifting-range score. As claims the limitation s of the claim are narrower than that allowed by the disclosure and one of ordinary skill in the art would not know that the shifting-range score is limited to the claim language.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 23-44 are rejected under 35 U.S.C. 102(b) as being anticipated by "Shepard Broad Law Centers Conditional Admissions Program Prior to April 4, 2000." It is noted that by applicants own admission submitted via IDS April 30, 2007 states that the applicant operated a conditional "admissions" program prior to April 4, 2000. Applicant gives a description of the program and states the grading was a conventional curve vs. a "calibrated" system. The examiner notes that the conventional bell curve system is a calibrated grading process as the outliers are thrown out and thus it becomes calibrated. The applicant states the students participated in a traditional 8-9 week summer semester. The applicant claims an abbreviated program, the summer semester is abbreviated from the traditional spring fall semesters of 15-16 weeks.

Claim Rejections - 35 USC § 103

6. Claims 23-44 rejected under 35 U.S.C. 103(a) as being unpatentable over Declaration submitted by US Patent examiner Traci Casler on August 20, 2007 dating back to August 1999.

7. The declaration teaches a conditional admission s program for students who do not have the ACT/SAT test scores to be admitted into the regular admission status. The declaration fails to teach a calibrated grading process of the tests administered to the

students. However by applicants own admission in the affidavit submitted by Stephen P Klein on August 24, 2005 Calibrated grading is old and well known among individuals who administer and grade examinations.

8. Claim 23-44 rejected under 35 U.S.C. 103(a) as being unpatentable over New York Times article, "Opponents of Change in CUNY Admissions Policy Helped Pass a Compromise Plan., Nov. 24, 199, Arenson, Karen; Hereinafter referred to as CUNY in view of www.gradcollege.stw.edu retrieved from the archive.org any linkage February 29, 2000.

9. As to claims 23, 43 and 44 CUNY teaches offering a program for admissions to the graduate school that includes an abbreviated academic program(Pg. 2 ¶ 8). Subjecting test takers to a test during the examination program(PG. 2 ¶ 7) Admitting student to the graduate program who achieve a satisfactory score(Pg. 2 ¶ 8). CUNY fails to teach calibrated grading and identifying the students who have not applied to the school. Calibrated Grading is an old and well known process of grading examination to promote fairness as noted by applicants affidavits submitted August 24, 2005, therefore it would have been obvious to use such a well known system when testing individuals against each other. As to identifying students who have not applied grad college identifies students who have not applied, it would have been obvious to combine this will CUNY As to the limitation getting a pool of standardized test takers the examiner takes official notice that it is old and well known in the art of admissions to purchase or gain access to a list of students in a particular category in order to target enrollment. The examiner draws on her experience as an admissions counselor from August 1999

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to May 2004 that colleges and universities routinely purchase student names and test scores from testing organizations such as SAT in order identify students in an academic/testing category in which the school wishes to target enrollment. This practice was taking place long before the examiner was in the field in 1999. Therefore it would have been obvious to use this test take pool batch for identifying new admits targeted for enrollment. CUNY fails to teach the method being applied to a grad school versus an undergraduate program. Grad college teaches a conditional admission process for a graduate school. It would have been obvious to one skilled in the art at the time of invention to combine Grad college with CUNY as success in one level of education would warrant a one to try this approach in a different level.

10. As to claim 24 CUNY teaches remedial courses (Pg. 2 ¶ 9).

11. As to claim 25 CUNY teaches a predetermined test score(Pg. 7 ¶ 7).

12. As to claim 26-27 CUNY teaches an abbreviated program(Pg. 2 ¶ 7). The examiner note the specific duration of the program is non-functional descriptive material. As the duration of the program is not used in any further determination for the program. These differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The steps would be performed regardless of the duration of the program. Thus; this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see in re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 44(Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ 2d 1031(Fed. Cir. 1994).

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13. As to claim 28-29 Grad college teaches the GRE verbal and written. (Pg. 7 I. 10-14). It would have been obvious to one skilled in the art to combine Grad college with CUNY as there are different levels of standardized testing for the specific levels of schooling.

14. As to claims 31-36 CUNY teaches instructing the students. As to the method of which the student is taught, either synchronous, asynchronous and online or in-person are non-functional descriptive material. These differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The steps would be performed regardless of they type of instruction being provided.. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see in re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 44(Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ 2d 1031(Fed. Cir. 1994). As to claim 37 CUNY teaches an abbreviated academic program, however CUNY does not teach a program for Law School. It would have been obvious to combine CUNY with law school. If one sees success in one area of education it would be obvious to try the same method at a different level with reasonable expectations of success and predicable results. See Supreme Court Decision KSR.

15. As to claims 30,38-41 CUNY teaches a method for admitting students who do not have the grades and test scores for regular admissions. CUNY fails to teach a shifting range for test scores and GPA's. Grad College teaches a shifting system based on GRE and GPA(Pg. 7 I. 5-25). It would have been obvious to one skilled in the art to

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combine Grad College with CUNY so as to find a balance for students who test well but average grades or don't test well and have great grades.

16. As to 42 CUNY teaches a method for admitting students who do not have the grades and test scores for regular admissions but fails to teach a calibrated grading system. However, the calibrated grading system is old and well known to those in the arena of examination grading.

Response to Arguments

17. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection and claims being cancelled.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Casler whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLC



